Nos. 88-1125, 88-1309

# In the Supreme Court of the United States

October Term, 1989

JANE HODGSON, M.D., ET AL.,
Petitioners,
Cross-Respondents,

vs.

THE STATE OF MINNESOTA, ET AL.,
Respondents,
Cross-Petitioners.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

BRIEF AMICUS CURIAE
IN SUPPORT OF THE STATE OF MINNESOTA

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## INTEREST OF THE AMICUS CURIAE

In its *amicus* brief in *Webster v. Reproductive Health Services, et al*, No. 88-605, Attorney General Guste for the State of Louisiana, joined by the Attorneys General of Arizona, Idaho, Pennsylvania, and Wisconsin, urged the Court to overturn *Roe v. Wade*[1] in its entirety, recognizing that the State has a compelling interest in protecting human life from the moment of conception. Louisiana has enacted a statute which expresses the State's

[1] 410 U.S. 113, 93 S.Ct. 705 (1973).

compelling interest in protecting the unborn child from conception.[2]

The *Webster*[3] plurality overruled the rigid three-part or trimester framework in *Roe*, acknowledging the states' compelling interest in protecting potential human life and maternal health throughout pregnancy. The Court in *Webster* also adopted a minimum level of scrutiny (instead of "strict scrutiny" required by *Roe*) in determining whether an abortion statute is constitutional, that is, whether it has a rational relation to any valid state objective. Mr. Justice Blackmun's dissent accurately characterized the plurality opinion, noting that state statutes in the area of abortion are now to be judged by the Court's most lenient standard of review, and that *Roe* would not survive the *Webster* analysis.[4] The State of Louisiana supports this judgment, which in effect, overrules *Roe v. Wade* in its entirety.

Louisiana has an interest in the disposition of the present case. Similar to Minnesota, Amicus has a number of statutes which seek to preserve the integrity of the family, including the rights and obligations of parents who make decisions that affect minor children. In particular, pursuant to La. R.S. 40:1299.35.5,[5] Louisiana requires that parents be informed of and consent to an abortion procedure on their minor daughter, or where parental

[2] La. R.S. 40:1299.35.0, reproduced in Appendix *A* at App. *3*.

[3] *Webster v. Reproductive Health Services, et. al*, 109 S.Ct. 3040 (1989).

[4] *Webster*, supra, 109 S.Ct. at 3067.

[5] Louisiana Revised Statutes 40:1299.35.5 is reproduced in Appendix B at App. 5.



consent is not obtained by the minor, the statute provides an alternative or by-pass procedure, whereby judicial consent may be obtained.[6]

To the extent that notice is implicit within Louisiana's parental consent statute, the decision of the Court in this case can impact upon the statutory scheme in Louisiana and other states. Pursuant to this reasoning, Louisiana, Minnesota and the Several States, therefore, have compelling interests in the preservation of a state's right to legislate in matters affecting the family and domestic relations.

Amicus urges the Court to find that a statute is constitutional which requires parental notice where a minor seeks an abortion because such a statute reasonably furthers the state's compelling interest in protecting human life or potential human life in the womb of the mother.

Amicus urges the Court to find that Minnesota's interests in protecting both the health and well-being of a pregnant minor and the unborn child amply justify a statutory requirement that parents receive notice prior to the performance of an abortion on their minor daughter.

## SUMMARY OF ARGUMENT

THE TENTH AMENDMENT AND THE *WEBSTER* DECISION PROVIDE THE CONSTITUTIONAL BASIS FOR THE COURT TO UP-

[6] *Margaret S. v. Treen*, 597 F. Supp. 636 (E.D. La. 1984; affirmed 794 F.2d 994 (5th Cir. 1984) held that R.S. 40:1299.35.5 is constitutional.

HOLD THE CONSTITUTIONALITY OF THE MINNESOTA STATUTE WHICH REQUIRES NOTICE TO PARENTS WHERE A MINOR CHILD SEEKS AN ABORTION BECAUSE THE STATUTE BEARS A RATIONAL RELATIONSHIP TO A LEGITIMATE STATE INTEREST.

The Tenth Amendment to the United States Constitution reserves power not delegated to the United States to the Several States and to the people. The police power reserved to the States under the Tenth Amendment enables the States to set standards of behavior that promote the safety, health or morals of the people. Neither the States nor the people have renounced their power to make pronouncements about the value of unborn human life or about regulations on or limitations to abortion. Conversely, Louisiana and other states have persisted to legislate in these areas.

Under the principles of federalism, the Court again should leave with the States the latitude to legislate in matters of abortion limitation, including those areas which preserve the family integrity. In the exercise of judicial restraint, as embodied within the Tenth Amendment, the Court should uphold the Minnesota procedures which mandate parental notification of a minor's intent to obtain an abortion or the alternative judicial by-pass option.

Amicus submits that *Webster* has abandoned *Roe's* heightened scrutiny as the standard for reviewing the constitutionality of state abortion statutes and has returned to the traditional rational basis test, which requires only that the Court determine whether the statute has a rational relation to a legitimate state objective. The



challenging party bears the burden of proving the statute unreasonable.

Minnesota and the Several States have a legitimate interest in protecting maternal health and familial relationships. The Minnesota statute bears a rational relationship to that objective and should, therefore, pass constitutional muster.

According to *Webster*, the Several States also have a compelling interest in protecting human life or potential human life. The Minnesota statute, therefore, is reasonable even if it forms part of the state's review process in furthering this compelling interest.

## ARGUMENT

THE TENTH AMENDMENT AND THE *WEBSTER* DECISION PROVIDE THE CONSTITUTIONAL BASIS FOR THE COURT TO UPHOLD THE CONSTITUTIONALITY OF THE MINNESOTA STATUTE WHICH REQUIRES NOTICE TO PARENTS WHERE A MINOR CHILD SEEKS AN ABORTION BECAUSE THE STATUTE BEARS A RATIONAL RELATIONSHIP TO A LEGITIMATE STATE INTEREST.

### 1. The Tenth Amendment Reserves Power not Granted in the United States Constitution to the States and the People.

Abortion legislation falls squarely within the police power reserved to the States under the Tenth Amendment.[7] The police power enables the States to set stan-

[7] U.S. Const. Amend. X: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

dards of behavior so as to promote the public well-being of its citizens. In *Mugler v. Kansas*, 123 U.S. 623, 8 S. Ct. 273 (1887), the Court spelled out the fundamental legislative nature of the State police power, warning that judicial usurpation of this power violates the principles of federalism formalized in the Tenth Amendment:

> It belongs to [state legislatures] to exert what are known as the police powers of the state, and to determine, primarily, what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety.
>
> [T]he courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation. Indeed, it is a fundamental principle in our institutions, indispensable to the preservation of public liberty, that one of the separate departments of government shall not usurp powers committed by the constitution to another department.
>
> . . .
>
> It cannot be supposed that the states intended, by adopting [the Fourteenth Amendment], to impose restraints upon the exercise of their powers for the protection of the safety, health, or morals of the community. 123 U.S. at 661-664, 8 S.Ct. at 297-98. (citation omitted.)

Chief Justice Rehnquist recognized the application of those fundamental principles to abortion legislation in his dissent in *Roe v. Wade*: "[T]he drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to [abortion]." *Roe v. Wade*, 410 U.S. at 177 (Rehnquist, J., dissenting).



Significantly, the Court has recognized restrictions placed on its own powers by the federalism principles embodied in the Tenth Amendment. In *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 105 S.Ct. 1005 (1985), the Court explained: "The essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to engage in any activity that their citizens choose for the common weal, no matter how unorthodox or unnecessary anyone else—*including the judiciary*—deems state involvement to be." *Id* at 546. (Emphasis added).

Conforming with the view of the majority, Justice Powell in his dissent stated: "Judicial enforcement of the Tenth Amendment is essential to maintaining the federal system so carefully designed by the Framers and adopted in the Constitution." *Id.* at 570.

Neither the Several States nor the people have consensually renounced their power to make moral pronouncements about the value of unborn human life or about abortion. Thus, in matters of domestic social policy and public morality touching upon the everyday familial lives of the people, where a fundamental right protected by the Constitution is not thereby infringed, the Several States should be free to legislate for the public good. *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 93 S.Ct. 1278 (1973); *Dandridge v. Williams*, 397 U.S. 471, 90 S.Ct. 1153 (1970); *United States v. Darby*, 312 U.S. 100, 61 S.Ct. 451 (1941). And, the *Webster* Court has now concluded that the right to abortion is not a fun-

damental constitutional right. *Webster*, supra, 109 S.Ct. at 3058 (1989).

Justice O'Connor perhaps best sums up the ever evolving concept of federalism in her separate opinion in *FERC v. Mississippi*, 456 U.S. 742 (1982):

> During the last Term of service on this Court, Justice Black eloquently explained that our notions of federalism subordinate neither national nor state interests:
>
> "The concept does not mean blind deference to 'States' Rights' any more than it means centralization of control over every important issue in our National Government and its courts. The Framers rejected both these courses. What the concept does represent is a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Younger v. Harris*, 401 U.S. 37, 44 (1971). *Id.* 456 U.S. at 796, 797.

This Court has specifically applied these fundamental principles of federalism to domestic affairs. In *Rose v. Rose*, 481 U.S. 619, 107 S.Ct. 2029 (1987), the Court recognized traditional family autonomy, noting that:

> We have consistently recognized that '[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.' *Ex Parte Burrus*, 136 U.S. 586, 593-594, 10 S.Ct. 850, 852-853, (1890); see *Hisquierdo*, supra 439 U.S., at 581, 99 S.Ct., at 808; *McCarty*, supra, 453 U.S., at



> 220, 101 S.Ct., at 2735. 'On the rare occasion when state family law has come into conflict with a federal statute, this court has limited review under the Supremacy Clause to a determination whether congress has 'positively required by direct enactment' that state law be preempted. *Hisquierdo*, supra, 439 U.S., at 581, 99 S.Ct., at 808, quoting *Wetmore v. Markoe*, 196 U.S. 68, 77, 25 S.Ct. 172, 175 (1904). Before a state law governing domestic relations will be overridden, it 'must do 'major damage' to 'clear and substantial' federal interests.' *Hisquierdo*, supra, 439 U.S., at 581, 99 S.Ct., at 808. 481 U.S. at 625 (1987)

Under the *Rose* analysis, the standard for reviewing the Minnesota Statute, M.S.A. 144.343 Subsec. 22-5, is limited to a consideration of whether the State, in requiring parental notification of a minor's intent to obtain an abortion, has thereby "done major damage" to a "clear and substantial" constitutional right which the pregnant child may possess. However, unlike the *Rose* analysis, the *Webster* minimum scrutiny analysis limits judicial review to a consideration of whether the parental notification statute bears a rational relationship to a legitimate state interest, because under *Webster*, there is no constitutional right to abortion. *Webster*, supra, 109 S.Ct. at 3057, 3063, 3076. Under this test, the statute has a presumption of constitutionality and the challenger bears the burden of proving it unreasonable.[8]

Amicus, therefore, urges the Court to exercise ju-

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[8] *See*, L. Tribe, American Constitutional Law 1439-1442 (1978); The Constitution of the United States of America, Analysis and Interpretation 1697-1702 (J. Killian ed. 1987); J. Nowak, R. Rotunda, & J. Young, Handbook on Constitutional Law 524-525 (1978).

dicial restraint and find that governmental regulation of domestic and family relations is reserved to the States and to the people through the democratic process.

2. *Webster* Has Effected Substantial Changes In the Area of Abortion.

In *Webster*, the plurality explicitly narrowed *Roe*; Justice O'Connor avoided reconsideration of *Roe*; Justice Scalia called for an express over-ruling of *Roe*. According to Justice Blackmun, "the plurality and Justice Scalia would overrule *Roe* and return to the State virtually unfettered authority to control [abortion]." *Webster v. Reproductive Health Services, et al*, 109 S.Ct. at 3067 (Blackmun, J., dissenting).

The Court in *Webster* rejected the trimester framework established in *Roe*. Chief Justice Rehnquist noted that the detailed approach in *Roe* conflicted with "a Constitution cast in general terms," *Id.* at 3056, and he rejected the basic premise in *Roe* that "the State's interest in protecting potential human life should come into existence only at the point of viability, [or] that there should be a rigid line allowing state regulation after viability but prohibiting it before viability." *Id.* at 3057.

Significantly, the Court in *Webster* abandoned *Roe's* heightened scrutiny as the standard for reviewing abortion statutes and returned to the traditional rational basis test, noting that:

> The experience of the court in applying *Roe v. Wade* in later cases, (citation omitted) suggests to us that there is wisdom in not unnecessarily attempting to elaborate the abstract differences between a "fundamental right" to abortion, (citation omitted) a "limited constitutional right," (citation omitted) or a *liberty interest* protected by the Due Process Clause, which we believe it to be. *Webster*, 109 S.Ct. at 3058 (Emphasis added).



Justice O'Connor has previously rejected *Roe's* heightened scrutiny test, in her dissents in *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983) and in *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 814, 828, 106 S.Ct. 2169, 2207, 2214 (1986). *Webster*, 109 S.Ct. at 3063 (1989).

The state's objectives of protecting potential human life and maternal health throughout pregnancy are consistent with Justice O'Connor's previous dissents.

After *Webster*, it is therefore apparent that five justices have defined the state's interests as being "compelling" in the protection of potential human life and maternal health at all stages of pregnancy. Using a minimum level of scrutiny as the standard of review, the Minnesota statute should, therefore, pass constitutional muster. The Court must only determine whether the statute has a rational relation to a legitimate state objective. *Williamson v. Lee Optical, Inc.*, 348 U.S. 483, 491; 75 S.Ct. 461, 466 (1955).[9]

The plurality in *Webster*, supra, initially notes that "*Roe v. Wade* implies no limitation on the authority of a state to make a value judgment favoring childbirth over abortion," *Id.* at p. 3042; and further concludes that the:

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[9] *See, Roe v. Wade*, 410 U.S. 113, 173, 221, where Justice Rehnquist presented the traditional due process test, citing *Williamson*. (Rehnquist, J., dissenting).

". . . State has a *compelling interest in ensuring maternal health* and *in protecting potential human life*, and these interests exist throughout pregnancy." *Id.* at 3057. (Emphasis added).

These articulated compelling state interests afford ample justification for a state to require appropriate parental notification of a pregnant child's decision to seek an abortion. However, Amicus suggests that the state also has a compelling interest in fostering and promoting parental involvement in the wrenching decisions facing their pregnant daughter. This interest emanates from recognition of and deference to the constitutionally established rights of all parents to nurture and support their children in the making of momentous and enduring decisions. *Prince v. Massachusetts*, 321 U.S. 158 (1944).

Amicus, therefore, urges the Court to apply the standard of review it established in *Webster*, supra, to this case. The Court should find that the provisions of the Minnesota parental notification statute reasonably afford the parents of a pregnant child opportunity to exercise their fundamental right of participation in the grave decision of their child to have an abortion. *Webster*, 109 S.Ct. at 3058.

Clearly, the Minnesota Statute in question passes constitutional muster, for various reasons well articulated in the Brief of the Relator, State of Minnesota. The pregnant child is offered adequate and realistic alternatives which afford her the opportunity to choose an abortion, notwithstanding parental objection or non-involvement. The judicial by-pass procedures, like those under the Louisiana Statute, R.S. 40:1299.35.5, do not unduly endanger her health or impose unreasonable restraints upon her decision-making process, nor do they increase the traumatic experience of the abortion.



3. The State Has a Compelling Interest in Protecting Human Life or Potential Human Life in the Womb of the Mother, as well as a Compelling Interest in Protecting the Health and Well-being of a Pregnant Daughter. These Interests are Attained by Requiring Parental Notice Where a Minor Seeks an Abortion.

Amicus urges the court to recognize herein that the State's interests in protecting the long-term health and well-being of a pregnant minor as well as that of the unborn child are compelling, and that these interests may be legitimately achieved through legislation requiring that parents receive notice prior to the performance of an abortion on their minor daughter. The origins of the State's interests in protecting and encouraging familial interrelationships emanates from Roman and ancient laws under which individuals had no societal existence except as part of a family. The common law gives recognition to familial interrelationships through its judicial precedents. The civil law, under which Louisiana is governed, gives recognition to these relationships through a written code, derived from the French Code Napoleon of 1804.

Accordingly, the Louisiana Civil Code expressly defines the scope of parental authority as being vested in

both the father and mother until a child reaches the age of majority or is emancipated. La. C.C. art. 216.[10]

The Louisiana Civil Code also provides that minor children do not have the legal capacity to contract or to represent themselves in litigation so the mother and father have the parental duty to protect and represent them. La. C.C. arts. 235 and 237.[11]

In conformity with these long established principles of law governing the rights and obligations of parent and child, and because of this Court's holding in *Roe* and its progeny,[12] Louisiana requires statutory consent to the abortion procedure in the form of a notarized statement

[10] Art. 216. Parental authority. A child remains under the authority of his father and mother until his majority or emancipation.

In case of difference between the parents, the authority of the father prevails. La. C.C. art. 216.

[11] Art. 235. Parental protection and representation of children in litigation.

Fathers and mothers owe protection to their children, and of course they may, as long as their children are under their authority, appear for them in court in every kind of civil suit, in which they may be interested, and they may likewise accept any donation made to them.

* * *

Art. 237. Parents' liability for offenses and quasi-offenses of children.

Fathers and mothers are answerable for the offenses or quasi-offenses committed by their children, in the cases prescribed under the titles: *Of Quasi-Contracts, and of Offenses and Quasi-Offenses.*

[12] The Louisiana Legislature passed House Concurrent Resolution No. 10 immediately after the decision in *Webster* on or about July 10, 1989, making it clear that Louisiana has never accepted permissible abortion and that any post-*Roe* legislation is for the purpose of restricting abortion to the maximum extent possible under the reasoning of the United States Supreme Court. H. Con. Res. 10, 1989 La., Second Extraordinary Session reproduced in Appendix C at App. 9.



by the minor's parent, or the abortion procedure is characterized as a battery on the minor by the physician. *Cage v. Wood*, 484 So.2d 850 (La. App. 1st Cir. 1986).

The Louisiana Medical Malpractice Act[13] requires written and informed consent prior to invasive surgical or medical treatment. The courts have held that invasive procedures without valid written consent are considered a statutory battery. *Pizzalotto v. Wilson*, 437 So.2d 859 (La. 1983). Certainly, societal interests require that parents help guide their distressed daughter through decisions related to abortion. At a minimum, the parents have an obligation to care for the minor in the event some complication develops.

Amicus suggests that the interests of the people of Minnesota in protecting familial rights are no less than those of the people of Louisiana. The Minnesota notification statute is reasonably related to the governmental objective of preserving family autonomy with emphasis on the health and well-being of minor daughters and the life of unborn children. The by-pass provisions provide reasonable alternative means to seek judicial action for giving or witholding notice whenever necessary. The Eighth Circuit decision should be affirmed.

## CONCLUSION

Minimum constitutional scrutiny of abortion statutes as articulated in *Webster* and judicial restraint as embodied in the Tenth Amendment to the United States Constitution, require that the Court reaffirm herein the

[13] La. R.S. 40:1299.40

proposition that the States retain the right to legislate in matters affecting familial relationships and the life of unborn children.

Respectfully submitted,

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# APPENDIX A

## LOUISIANA LEGISLATIVE INTENT

La. R.S. 40:1299.35.0 Legislative intent

It is the intention of the Legislature of the State of Louisiana to regulate abortion to the extent permitted by the decisions of the United States Supreme Court. The Legislature does solemnly declare and find in reaffirmation of the longstanding policy of this State, that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this State. Further, the Legislature finds and declares that the longstanding policy of this State is to protect the right to life of the unborn child from conception by prohibiting abortion impermissible only because of the decisions of the United States Supreme Court and that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions shall be enforced.

## APPENDIX B

## LOUISIANA PARENTAL CONSENT STATUTE

§ 1299.35.5. Minors

A. No physician shall perform or induce an abortion upon any pregnant woman who is under the age of eighteen years and who is not emancipated judicially or by marriage unless the physician has received one of the following documents:

(1) A notarized statement signed by the mother, father, legal guardian, or tutor of the minor declaring that the affiant has been informed that the minor intends to seek an abortion and that the affiant consents to the abortion.

(2) A court order as provided in Subsection B of this Section.

B. The following provisions shall apply to all applications for court orders by minors seeking abortions and appeals from denials of applications:

(1) Jurisdiction to hear applications shall be in the court having juvenile jurisdiction in the parish where the abortion is to be performed or the parish in which the minor is domiciled.

(2) Each clerk of each court which has jurisdiction to hear such applications shall prepare application forms in clear and concise language which shall provide step by step instructions for filling out and filing the application forms. All application forms shall be submitted to the at-

torney general for his approval. Each clerk shall assist each minor who requests assistance in filling out or filing the application forms.

(3) Each application shall be heard in chambers, confidentially, in a summary manner, and within forty-eight hours of the filing thereof.

(4) If the court finds that the minor is sufficiently mature and well enough informed to make the decisions concerning the abortion on her own, the court shall issue an order authorizing the minor to act on the matter without parental consultation or consent.

(5) If the court finds that the minor is not competent to make the decision concerning the abortion on her own, but finds that the abortion nevertheless would be in the best interest of the minor, the court shall issue an order authorizing the abortion.

(6) Appeals from decisions of the court hearing the application shall be by trial de novo in the court of appeal.

(7) Each clerk of each court of appeal shall prepare appeal forms in clear and concise language which shall provide step by step instructions for filling out and filing the appeal forms. All appeal forms shall be submitted to the attorney general for his approval. Each clerk shall assist each minor who requests assistance in filling out or filing the appeal forms.

(8) Each appeal shall be heard in chambers, confidentially, in a summary manner, and within forty-eight hours of the filing thereof.

(9) The decision of the court of appeal shall be based on the criteria provided in Paragraphs (4) and (5) of this Subsection.



(10) Each minor who declares to the clerk of the court hearing the application or appeal that she does not have sufficient funds to pay for the costs of the application or the appeal shall be allowed to proceed in forma pauperis.

(11) Each minor who files an application or an appeal shall be entitled to a hearing and a determination by the court independently of any notice to or consultation with her parents, tutor, or guardian.

(12) Except as otherwise provided in this Section, or as otherwise provided by rule of court, hearings of applications and appeals shall be conducted in accordance with the provisions of the Louisiana Code of Juvenile Procedure.

## APPENDIX C

## LOUISIANA HOUSE CONCURRENT RESOLUTION

**Second Extraordinary Session, 1989**

HOUSE CONCURRENT RESOLUTION NO. 10

BY REPRESENTATIVES DIMOS, JENKINS, ALARIO, ST. RAYMOND, ACCARDO, ATER, BELLA, BRADLEY, BRUN, BRUNEAU, CAIN, CARRIER, CRANE, DAMICO, DIEZ, DONELON, DUKE, ELLINGTON, ENSMINGER, FORSTER, GARRITY, GAUDIN, GEE, GUIDRY, GUZZARDO, HAIK, HAND, HEBERT, HEBERT, HERRING, KIMBALL, LABORDE, LANCASTER, LANDRIEU, LEMOINE, MARTIN, MCCLEARY, MCFERREN, MILLER, ODINET, PATTI, SALTER, SCOGIN, SIRACUSA, SITTIG, A. D. SMITH, A. J. SMITH, J. R. SMITH, SOUR, STELLY, STINE, STRAIN, S. H. THERIOT, THOMPSON, TRAVIS, VOLENTINE, AND WADDELL AND SENATORS BARES, HAINKEL, LAURICELLA, BRINKHAUS, CROSS, DECUIR, DOLAND, FOSTER, HOLLIS, LANDRY, MCLEOD, OSTERBERGER, POSTON, ULLO, WINDHORST, AND RAYBURN

A CONCURRENT RESOLUTION

To express the intent of the legislature that the district attorneys of this state shall enforce state criminal laws which prohibit abortion to the fullest extent

permitted under and consistent with the U.S. Constitution as interpreted by the United States Supreme Court.

WHEREAS, Louisiana's criminal abortion statutes, R.S. 14:87 through 88, remain a part of the Louisiana Revised Statutes of 1950; and

WHEREAS, since the Roe v. Wade decision the Louisiana Legislature has passed a number of statutes designed both to restrict abortion to the maximum extent permitted by the United States Supreme Court and to protect the unborn as well as women, doctors, and nurses who do not wish to participate in abortion; and

WHEREAS, the Louisiana Legislature has clearly stated its intent in R.S. 40:1299.35.0, that Louisiana's criminal statutes prohibiting abortion take priority over those statutes which only regulate abortion and that abortion should be prohibited as soon as permitted by federal courts.

THEREFORE, BE IT RESOLVED that it is the intent of the Legislature of Louisiana that the district attorneys of this state shall enforce the criminal statutes pertaining to abortion, R.S. 14:87, 87.1, 87.2, 87.4, 87.5, and 88, to the fullest extent permitted by and consistent with the Constitution of the United States as interpreted by the United States Supreme Court.

SPEAKER OF THE HOUSE
OF REPRESENTATIVES

PRESIDENT OF THE SENATE